

APPEAL NO. 032983
FILED DECEMBER 31, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 9, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters and that she has not permanently lost SIBs eligibility by failing to qualify for SIBs benefits for four consecutive quarters. The appellant (carrier) appeals these determinations. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee is entitled to SIBs after the first quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)), relied upon by the claimant for SIBs entitlement, provides that a good faith effort has been made if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." The carrier asserts that for the seventh quarter qualifying period, the claimant failed to satisfy the good faith criterion provided for in Rule 130.105(d)(5) because she failed to document a job search during each week of the period. The carrier additionally asserts that because the claimant failed to prove entitlement to seventh quarter SIBs, and because fourth, fifth and sixth quarter SIBs were not paid, she is not entitled to eighth quarter SIBs because she failed to qualify for benefits for four consecutive quarters. In Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000, we specifically rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). Additionally, compliance with only one subsection of Rule 130.102(d), in this case the return to work provision, will establish good faith. See Texas Workers' Compensation Commission Appeal No. 001099, decided June 21, 2000.

Whether the claimant returned to work in a position relatively equal to her ability to work was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence, including the medical evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge